

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-070686
	:	TRIAL NO. B-9901613
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
MARK C. WALTERS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar. This judgment entry is not an opinion of the court.¹

Defendant-appellant Mark C. Walters appeals from the trial court's nunc pro tunc entry imposing a sentence of incarceration and post-release control. In 1999 Walters was convicted of vehicular assault, felonious assault, and failure to comply. The trial court sentenced him to nine and one-half years in prison. The trial court did not, however, notify Walters that a mandatory period of post-release control was part of his sentence.

In September 2007, pursuant to R.C. 2929.191, Walters was returned to the trial court for a new sentencing hearing. The trial court imposed the same sentence, included the notification of post-release control, and gave Walters credit for time already served.

Walters's first two assignments of error, in which he argues that R.C. 2929.191 is unconstitutional, are overruled on the authority of *State v. Hill*.²

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² 1st Dist. No. C-060727, 2007-Ohio-3085.

His third assignment of error, in which he contends that the trial court erred in imposing post-release control at a resentencing proceeding held 8 years after the sentence had first been imposed, but while Walters was still imprisoned, is overruled on the authority of *State v. Simpkins*.³

In his fourth assignment of error, Walters contends that the trial court erred in employing a nunc pro tunc entry to impose a new sentence that added post-release control. At a resentencing hearing conducted to impose post-release control, R.C. 2929.191 requires that the trial court “shall place upon the journal of the court an entry nunc pro tunc to record the correction to the judgment of conviction.” But, as Walters notes, the Ohio Supreme Court has “limited [the use of nunc pro tunc entries] to reflecting what the court actually decided, not what the court might or should have decided or what the court intended to decide.”⁴ Under the facts of this case, however, the use of a nunc pro tunc entry “was without consequence where the court actually resentenced [Walters].”⁵ The assignment of error is overruled.

In his final assignment of error, Walters argues that, at the resentencing hearing, the trial court should have applied the sentencing scheme in effect at the time that he had committed his offenses, and that the trial court’s application of *State v. Foster*⁶ violated due process and the Ex Post Facto Clause. The fifth assignment of error is overruled. This court has previously determined that the application of *State v. Foster* does not violate due process or the Ex Post Facto Clause.⁷

Therefore, the judgment of the trial court is affirmed.

³ 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568, syllabus.

⁴ *State ex rel. Mayer v. Henson*, 97 Ohio St.3d 276, 2002-Ohio-6323, 779 N.E.2d 223, at ¶14, quoting *State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 164, 1995-Ohio-278, 656 N.E.2d 1288.

⁵ *State v. Mosmeyer* (June 20, 2007), 1st Dist. No. C-060747.

⁶ 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

⁷ See *State v. Bruce*, 170 Ohio App.3d 92, 2007-Ohio-175, 866 N.E.2d 44, at ¶10-11, discretionary appeal not allowed, 113 Ohio St.3d 1492, 2007-Ohio-1986, 865 N.E.2d 915; see, also, *State v. Lockett*, 1st Dist. No. C-060404, 2007-Ohio-308.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., PAINTER and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on September 17, 2008
per order of the Court _____.
Presiding Judge